STATE OF MICHIGAN

COURT OF APPEALS

BUENA VISTA HOME ENTERTAINMENT, INC.,	UNPUBLISHED February 27, 2007
Petitioner-Appellee,	
v	No. 263536 Tax Tribunal
DEPARTMENT OF TREASURY,	LC No. 00-295693
Respondent-Appellant.	

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from the opinion and judgment of the Michigan Tax Tribunal allowing petitioner to exclude royalties paid to film producers from its single business tax base. Respondent argued below, and reasserts on appeal, that petitioner is not a "film distributor" within the meaning of the Single Business Tax Act, MCL 208.1 *et seq*., and cannot exclude the royalties in question from its tax base. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In the absence of fraud, our review of Tax Tribunal decisions is limited to whether the Tax Tribunal made an error of law or adopted a wrong legal principle. *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462; 462 NW2d 765 (1990). Factual findings of the Tax Tribunal are binding if they are supported by competent, material, and substantial evidence on the whole record. *Id*. at 462-463. "'Substantial evidence' must be more than a scintilla of evidence, although it may be substantially less than the preponderance of evidence necessary in most civil cases." *Mid America Mgt Corp v Dep't of Treasury*, 153 Mich App 446, 460; 395 NW2d 702 (1986). Issues of statutory interpretation are questions of law that we review de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The Michigan single business tax (SBT) is a levy on the privilege of doing business in the state. *Wismer & Becker Contracting Engineers v Dep't of Treasury*, 146 Mich App 690, 696; 382 NW2d 505 (1985). The SBT "is a 'consumption-type value-added tax' that is subject to certain exemptions, exclusions, and adjustments." *Twentieth Century Fox Home Entertainment, Inc v Dep't of Treasury*, 270 Mich App 539, 541-542; 716 NW2d 598 (2006), quoting *Caterpillar, Inc v Dep't of Treasury*, 440 Mich 400, 408-409; 488 NW2d 182 (1992). Generally,

in calculating its tax base for SBT act purposes, a taxpayer must add to its business income all royalties to the extent that they were deducted in arriving at federal taxable income. MCL 208.9(4)(g); *Field Enterprises v Dep't of Treasury*, 184 Mich App 151, 153; 457 NW2d 113 (1990). "A related provision requires that the taxpayer deduct royalties, to the extent included in arriving at federal taxable income, in determining its tax base." *Field Enterprises*, *supra* at 154; MCL 208.9(7)(c). "Hence, the party who pays the royalties rather than the one who receives them pays taxes under the act." *Field Enterprises*, *supra* at 154.

However, not all royalties must be considered in the calculation of the SBT base. Specifically, "[r]oyalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer" do not have to be added or deducted from the taxpayer's business income in determining its tax base. MCL 208.9(4)(g)(vii) and (7)(c)(vi). These provisions have retroactive effect to July 15, 1993. *Twentieth Century Fox*, *supra* at 543. The legislation permits "a film distributor to not include in its tax base the royalty payments it made to film producers, MCL 208.9(4)(g)(vii), but prohibit[s] film producers from deducting royalty payments they received, MCL 208.9(7)(c)(vi)." *Twentieth Century Fox*, *supra* at 543.

In *Twentieth Century Fox*, the petitioner was a videocassette distributor. *Id*. at 540. The petitioner asserted that "it was a film distributor and, therefore, was not required to include royalty payments it made to film producers [after July 15, 1993] in its SBT base, pursuant to MCL 208.9(4)(g)(vii)." *Twentieth Century Fox*, *supra* at 543. The respondent asserted that the petitioner was "not a film distributor and, therefore, must include the payments it made to film producers in its SBT base." *Id*. This Court held that the petitioner was, in fact, a "film distributor" under MCL 208.9(4)(g)(vii). *Twentieth Century Fox*, *supra* at 545-546. Specifically, the Court noted that although the statute did not expressly define "film distributor," the language of the statute "indicates that one need not distribute motion pictures on strips of emulsion-coated cellulose to be classified as a 'film distributor.'" *Id*. at 544-545. Furthermore, contrary to the respondent's contention, the Court held that the plain language of the statute did not "indicate that a film distributor has to distribute films to theaters in order to be considered a film distributor." *Id*. at 545. Thus, the Court concluded that the petitioner was a "film distributor" within the meaning of MCL 208.9(4)(g)(vii) and was "not required to add to its business income the royalties it pays to film producers in order to calculate its SBT base." *Twentieth Century Fox*, *supra* at 545-546.

The material facts and legal issues in the present case are factually and legally indistinguishable from *Twentieth Century Fox*.[1] Like the petitioner in *Twentieth Century Fox*, petitioner in this case is a film distributor principally engaged in distributing copyrighted motion pictures for home entertainment using the medium of videocassettes. *Id*. at 540. According to

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[1] *Twentieth Century Fox* clearly applies to this case; it was issued on April 6, 2006, while the instant appeal was pending. See, generally, *West v Farm Bureau General Ins Co*, 272 Mich App 58, 66; 723 NW2d 589 (2006) ("[i]n general, judicial decisions are given full retroactive effect, meaning that they are applied to all pending cases that raise and preserve the same challenge").

Twentieth Century Fox, and contrary to respondent's argument here, "one need not distribute motion pictures on strips of emulsion-coated cellulose to be classified as a 'film distributor.'" *Id*. at 545. Respondent's related argument – that the history surrounding the SBT act and its amendments indicates that it was not intended to apply to home video distributors, but rather to film distributors that distribute motion pictures to theaters – was rejected in *Twentieth Century Fox* because the plain language of the statute does not "indicate that a film distributor has to distribute films to theaters in order to be considered a film distributor . . . ." *Id*. at 545. Thus, petitioner is a "film distributor" within the meaning of the SBT act. Accordingly, the Tax Tribunal correctly ruled that, in calculating its SBT base, petitioner may exclude royalties paid to film producers for the period after July 15, 1993.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis